



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Stephen Hammond, Director  
Division of Solid and Hazardous Materials  
New York State Department of Environmental  
Conservation  
50 Wolf Road, Room 488  
Albany, New York 12233-7250

Dear Mr. Hammond:

Thank you for your letter of December 23, 1998, concerning the clean up of manufactured gas plant (MGP) sites. Specifically, you raise concerns about the regulatory policies and impacts of co-processing decharacterized wastes through a "Bevill" unit, such as a utility boiler. As explained below, although we can appreciate your concerns, we believe that the underlying policy and regulatory issues have been aired, particularly in the context of our recent Land Disposal Restrictions (LDR) Phase IV final rule (63 FR 28556, May 26, 1998). Of course, as emphasized in our recent response to you on other MGP questions, dated January 20, 1999, we ultimately regard New York State as the appropriate regulatory authority for making final determinations on site-specific issues.

The observations in your letter primarily address the absence of regulatory oversight and LDR requirements for decharacterized wastes sent to a Bevill unit for co-processing. As we read your letter, you appear to be raising issues that were particularly germane during the development of our MGP remediation policies eventually embodied in the April 26, 1993 memorandum from Sylvia Lowrance, Director of the Office of Solid Waste to Regional Waste Management Directors (copy enclosed). To encourage effective and timely remediation of historic MGP sites, our 1993 memorandum created a very limited regulatory policy solely for MGP wastes. Under that policy, which is still extant today, decharacterized MGP wastes can be sent to utility boilers without triggering substantial regulatory oversight or permitting obligations.

Nonetheless, as your letter attests, the issue of LDR obligations has been brought into sharper focus by the Phase IV final rule, particularly with respect to decharacterized wastes. The 1993 memorandum predates the Phase IV final rule, and does not purport to fully resolve the LDR requirements for decharacterized MGP wastes that are burned in a electric utility fossil fuel

boiler. Recently, in separate correspondence to representatives of the electric utility industry, dated August 21, 1998 (copy enclosed), we explained that decharacterized MGP wastes remain subject to LDR requirements if they are actively managed in a way that constitutes land disposal. These requirements mandate that actively managed MGP wastes must be treated to eliminate any characteristics and to achieve the Universal Treatment Standards (UTS) for any underlying hazardous constituents. In the case of soils contaminated with MGP wastes, the generator can elect to comply with the Phase IV soil standards in lieu of the otherwise applicable UTS.

However, you are quite correct in pointing out that the LDR requirement to treat underlying hazardous constituents does not apply to these decharacterized MGP wastes because of the lack of land placement prior to combustion and the Bevill status of the combustion wastes. As we indicated in the Phase IV preamble, however, residues from the co-processing of MGP wastes in a utility boiler are not subject to the LDR requirements because these residues are Bevill wastes excluded from hazardous waste requirements.

We appreciate your concerns that EPA's approach in its MGP policies might lead to abuses (for example, as you describe it, the "laundering" of non-MGP wastes in utility boilers). In general, however, we do not share your concerns. EPA's MGP policies were developed specifically for remediation of historic MGP sites – indeed they were based on the Agency's experience at MGP sites under the Federal Superfund program – and they reflect the particular characteristics of MGP wastes (e.g., that these wastes are themselves coal-derived) and of MGP remediation. Generators of other wastes would be misinterpreting the scope of the 1993 memorandum and the Phase IV discussions of MGP wastes if they assume these policies apply broadly.

I hope this provides you with sufficient information to proceed with your state policies and site-specific decisions regarding remediation of MGP waste sites in New York State. As you know, we are encouraging these cleanups to be done as quickly as possible, and we appreciate your efforts, and those of the New York Superfund program, in supporting this important environmental protection effort. If you have any further questions, please feel free to contact me directly at (703) 308-8895, or your staff may contact Rita Chow of our Waste Treatment Branch at (703) 308-6158.

Sincerely yours,



Elizabeth A. Cotsworth, Acting Director  
Office of Solid Waste

Enclosures (2)